

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 05-27

December 28, 2004

TO: All Regional Directors, Officers-in-Charge, and
Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Casehandling Instructions regarding Due Process Issues in Union
Merger and Affiliation Cases

Developments in Allied Mechanical Services, 341 NLRB No. 141, since the Board's decision on May 28, 2004, make it prudent to coordinate the litigation of any unfair labor practice cases involving union mergers and affiliations in which an issue is raised as to whether the merger was conducted with due process. Accordingly, Regions are directed to submit to the Division of Advice any cases that raise this issue.

In its original decision in Allied Mechanical, the Board held that a union that resulted from the merger of two local unions did not succeed to the bargaining rights of one of the merged locals because that local's members had no opportunity to vote on the merger.¹ On July 12, the General Counsel moved the Board to reconsider its decision. The motion noted that the Board's holding that a membership vote is required to satisfy due process is not supported by extant Board law. It further noted that the Board's decision failed to address the larger issue of what factors are relevant in determining whether an employer is obligated to bargain with a successor union, an issue the General Counsel had litigated in the underlying case. On the latter point, the General Counsel noted that the Supreme Court held that the relevant inquiry is confined to whether the change in representative occasioned by the merger or affiliation so alters the representative's identity as to raise a question concerning representation.² Accordingly, he argued, the Board should consider only whether there is substantial continuity in the identity of the representative and an alleged lack of due process is irrelevant to that inquiry. The General Counsel's motion is still pending.³

¹ 341 NLRB No. 141, slip op. at 1.

² See NLRB v. Financial Institution Employees (Seattle-First National Bank), 475 U.S. 192, 206-208 (1986).

³ An order denying the motion inadvertently issued on November 18, 2004. The Board rescinded that order in a subsequent order dated December 8, 2004.

While this issue remains unresolved, it is prudent to coordinate the General Counsel's position in other cases in which this issue is raised. Accordingly, such cases should be submitted to Advice.

If you have any questions regarding this memorandum, please contact your Assistant General Counsel or Deputy or the Division of Advice.

/s/
R. A. S.

cc: NLRBU
Release to the Public

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